No. 15,644

IN THE

United States Court of Appeals

For the Ninth Circuit

MARION S. FELTER, on behalf of himself and others similarly situated,

Appellant,

vs.

SOUTHERN PACIFIC COMPANY, a corporation; BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary association; J. J. CORCORAN, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. TEAGUE, as Secretary, General Committee, Brotherhood of Railroad Trainmen,

Appellees.

BRIEF OF APPELLEES

BROTHERHOOD OF RAILROAD TRAINMEN, a Voluntary Association; J. J. CORCORAN, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. TEAGUE, as Secretary, General Committee, Brotherhood of Railroad Trainmen.

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STATEMENT OF THE CASE.

This is a suit for declaratory and injunctive relief brought pursuant to 28 U.S.C. 1332, 1337 and 2201, for the purpose of determining a question in actual controversy between appellant, Marion S. Felter and

others similarly situated, and appellees, Southern Pacific Company, a corporation; Brotherhood of Railroad Trainmen, a voluntary association; J. J. Corcoran, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. Teague, as Secretary, General Committee, Brotherhood of Railroad Trainmen, to-wit, the question of the validity under the Railway Labor Act (45 U.S.C. 152, Eleventh) of a written collective bargaining agreement which became effective August 1, 1955 (R. 74-80). This agreement, which is now and at all times material has been in effect between the Southern Pacific Company and the Brotherhood of Railroad Trainmen, provides in effect that the Southern Pacific Company shall deduct sums for periodic dues, initiation fees, assessments and insurance (not including fines and penalties), payable to the Southern Pacific Company by members thereof from "wages earned in any of the services or capacities covered in Section 3, First (h) of the Railway Labor Act defining the jurisdictional scope of the First Division, National Railroad Adjustment Board, upon the written and unrevoked authorization of a member in the form agreed upon by the parties hereto * * * *." This arrangement is commonly referred to as a "Dues Deduction Agreement." This Dues Deduction Agreement (R. 74-80) provides (in part):

> "1. (a) Subject to the terms and conditions of this agreement the Company shall deduct sums for periodic dues, initiation fees, assessments and insurance (not including fines and penalties), payable to the Organization by members thereof

from wages earned in any of the services or capacities covered in Section (3) First (h) of the Railway Labor Act defining the jurisdictional scope of the First Division, National Railroad Adjustment Board, upon the written and unrevoked authorization of a member in the form agreed upon by the parties hereto, copy of which is attached as Attachment 'A' and made a part hereof.

(b) The signed authorization may, in accordance with its terms, be revoked in writing at any time after the expiration of one year from the date of its execution, or upon the termination of this agreement, or upon the termination of the rules and working conditions agreement between the parties, whichever occurs sooner. Revocation of the authorization shall be in the form agreed upon by the parties, copy of which is attached as Attachment 'B' and made a part hereof.

(c) Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished as necessary by the Organization without cost to the Company. The Organization shall assume full responsibility for the procurement and execution of the forms by employes and for the delivery of such forms to the Company.

2. Deductions as provided for herein shall be made by the Company in accordance with certified deduction lists furnished to the Division Superintendent by the Treasurer of the Local Lodge of which the employe is a member. Such lists, together with assignment and revocation of assignment forms, shall be furnished to the Division Superintendent on or before the 5th day of

each month in which the deduction or termination of deduction is to become effective as hereinafter provided. The original lists furnished shall show the employe's name, employe account number, and the amount to be deducted in the form approved by the Company. Thereafter, two lists shall be furnished each month by the Treasurer of the Local Lodge to the Division Superintendent as follows:

(a) A list showing any changes in the amounts to be deducted from the wages of employes with respect to whom deductions are already being made. Such list shall show both the amounts previously authorized to be deducted and the new amounts to be deducted; also the names of employes from whose wages no further deductions are to be made which shall be accompanied by revocation of assignment forms signed by each employe so listed. Where no changes are to be made the list shall so state.

(b) A list showing additional employes from whose wages the Company shall make deductions as herein provided, together with an assignment authorization form signed by each employe so listed. Where there are no such additional employes the list shall so state."

ARGUMENT.

I.

THE ONLY QUESTION IS WHETHER THE PROVISIONS OF THE DUES DEDUCTION AGREEMENT PLACES AN UNREASONABLE BURDEN ON MEMBERS OF THE BROTHERHOOD OF RAILROAD TRAINMEN WHO WISH TO WITHDRAW FROM THE BROTHERHOOD SO AS TO VIOLATE SUCH MEMBER'S RIGHT TO CHANGE UNIONS UNDER THE RAILWAY LABOR ACT.

There is nothing confusing in the terms of the agreement in question. It specifically provides that where a member who has signed a written authorization for the employer Southern Pacific Company to deduct from his earnings membership fees that a revocation of that authorization must be made upon a form "reproduced and furnished" by the Brotherhood of Railroad Trainmen which forms in turn are to be presented to the employer Southern Pacific Company through the Brotherhood of Railroad Trainmen. This Court is concerned only with the question of whether such a requirement as far as revocation of a dues deduction authorization is concerned is valid under Section 2, Eleventh, of the Railway Labor Act (45 U.S.C. Section 152, Eleventh). The exact language of the agreement is as follows:

> "(c) Both the authorization forms and the revocation of authorization forms shall be reproduced and furnished by the organization without cost to the company. The organization shall assume full responsibility for the procurement and execution of the forms by employees and for the delivery of such forms to the company." (R. 75.)

Appellant in his brief states that the Railway Labor Act provides that employees shall be free of "interference, influence or coercion" in their choice of representatives (45 U.S.C. Section 152, Third). The Act also provides that nothing "shall prevent an employee from changing membership from one organization to another organization" (45 U.S.C. Section 152, Eleventh (c)).

The argument of appellant that the provisions of the Dues Deduction Agreement here under consideration constitute limitations not authorized by the Railway Labor Act and are "contrary to its entire design" is obviously wrong (Appellant's Brief, page 9).

There is absolutely nothing in the Railway Labor Act or in any other legislation to indicate that the design of the act or the intent of Congress was to insure that an employee would have absolute freedom to change from one union to another. The purpose of the Railway Labor Act in insuring that certain employees may change unions has been clearly set out by the United States Court in *Pennsylvania R. Co. v. Rychlik,* 352 U.S. 480 (1957), as follows:

> "It thus becomes clear that the only purpose of Section 2, Eleventh (c) was a very narrow one: to prevent compulsory dual unionism or the necessity of changing from one union to another when an employee temporarily changes crafts. The aim of the Section, which was drafted by the established unions themselves, quite evidently was not to benefit rising new unions by permitting them to recruit members among employees who

are represented by another labor organization. Nor was it intended to provide employees with a general right to join unions other than the designated bargaining representative of their craft, except to meet the narrow problem of intercraft mobility. This is made particularly clear when the provision is taken in the context of American labor relations in general. The National Labor Relations Act contains no parallel to subsection (c), and employees under a union-shop contract governed by that Act must join and maintain membership in the union designated as the bargaining representative or suffer discharge. Similarly subsection (c) does not apply to *nonoperating* employees, where the problem of seasonal intercraft movement does not exist. Railroad employees such as clerks working under a union-shop contract have no right at all to join a union other than the bargaining representative. In other words, once a union has lawfully established itself for a period of time as the authorized bargaining representative of the employees under a union-shop contract, Congress has never deemed it to be a 'right' of employees to choose between membership in it and another competing union. If Congress intended to confer such a right, it would scarcely have denied the right to non-operating employees of the railroads or industrial employees under the National Labor Relations Act. The purpose of Section 2, Eleventh (c) was simply to solve the problem of intercraft mobility under railroad union-shop contracts.''

From this, it is apparent that the appellant has the privilege of changing unions. However, it cannot be seriously contended that it was the intent of Congress

that this privilege should be free of all restrictions no matter how reasonable they might be. The trial Court therefore clearly stated as follows:

> "The only question is whether the procedure established by this agreement places such an unreasonable burden on employees who wish to withdraw from the Brotherhood that it operates as a violation of an employee's right under the act to change unions."

II.

THE PROVISIONS OF THE DUES DEDUCTION AGREEMENT HERE UNDER ATTACK ARE IN ACCORDANCE WITH THE RAILWAY LABOR ACT AND ARE ADMINISTRATIVE IN CHARACTER AND DO NOT VIOLATE APPELLANT'S RIGHTS UNDER THE ACT.

(a) The Requirement That Revocations Be Transmitted to the Southern Pacific Company by the Brotherhood of Railroad Trainmen Is a Reasonable Procedure and Not Violative of the Railway Labor Act.

There are two distinct requirements of the Dues Deduction Agreement with reference to revocation of a dues deduction authorization. One is that the revocation must be on forms "reproduced and furnished" by the Brotherhood of Railroad Trainmen and the other is that the forms must be delivered to the Southern Pacific Company through the Brotherhood of Railroad Trainmen together with certified deduction lists on or before the 5th day of the month in which the change in deductions is to become operative (R. 75). The requirement that a revocation must be presented by the Brotherhood of Railroad Train-

ıen to the Southern Pacific Company is certainly a easonable requirement for the orderly administration f the Dues Deduction Agreement. The Brotherhood f Railroad Trainmen was the representative of the ppellant and it had the burden of insuring the outhern Pacific Company that revocations were not orgeries and that the calculations in the amounts to e deducted were accurate which, in turn, would effect ıe responsibility of the Brotherhood of Railroad rainmen for keeping accurate and up-to-date lists. uch a provision clearly serves the purpose of avoidıg disputes and controversies that might arise beveen the Brotherhood of Railroad Trainmen and the outhern Pacific Company and is in accord therefore ith the express purpose of the Railway Labor Act 45 U.S.C. Section 152, First). Unless the revocation sent through the Brotherhood of Railroad Trainıen, there is no way that the Brotherhood of Raiload Trainmen would know when an employee had evoked or attempted to revoke his existing authorıation for the deduction of his dues. Such a revocaon without coming through the Brotherhood of Raiload Trainmen, if accepted by the Southern Pacific ompany, would only lead to confusion and dispute. onsequently, the requirement that revocations be ransmitted through the Brotherhood of Railroad rainmen to the Southern Pacific Company in no way ıterferes with the right of the employee to make uch a revocation but simply sets up a reasonable and ensible procedure for the orderly administration f the Dues Deduction Agreement. It is just as

simple and just as easy for the employee to send the revocation to the Brotherhood of Railroad Trainmen as it is to send it to the Southern Pacific Company and it is a lot less confusing and certainly prevents any misunderstanding or dispute. Certainly, no serious argument can be made that this in any way interferes with a member's right or privilege to change from one union to another. The only purpose of the provisions of the Dues Deduction Agreement requiring that a revocation be sent through the members' representative union, here, the Brotherhood of Railroad Trainmen, is to simplify the administration of the Dues Deduction Agreement, a purely procedural matter having nothing to do with the substantial rights of the appellant.

(b) The Requirement in the Dues Deduction Agreement That Revocation Forms Be "Reproduced and Furnished" by the Brotherhood of Railroad Trainmen Is Reasonable and Does Not Violate the Railway Labor Act.

The Railway Labor Act (45 U.S.C. Section 152, Eleventh (b)) contains nothing with reference to the procedure to be followed in making deductions from wages except that the authorizations and revocations shall be in writing. As to how such authorizations and revocations are to be processed or what procedure is to be followed is not set out in the Act. Unless some orderly procedure is established by agreement, such as was done here, confusion and misunderstanding would result. If this confusion and misunderstanding is to be avoided or reduced to a minimum a procedure such as was established by the agreement

ıere must be followed. The procedure to be followed ıas been left to the parties when and if they "make .greements providing for the deduction." The re-ıuirement that revocation forms be "reproduced and urnished" by the Brotherhood of Railroad Trainmen erves a desirable objective. By requiring that the epresentative union of the employee, here the Brotherhood of Railroad Trainmen, furnish its own orm for revocation, either in person or by mail, it an feel reasonably assured when the correct form is eturned that it is not a forgery and is the result of considered decision of the employee and that he has ot been the victim of a raid or has been high-pres-ıred or unduly influenced. Certainly, the Brother-ood of Railroad Trainmen has the right to establish y the provisions of its Dues Deduction Agreement egular steps to be followed by the members so as to e reasonably protected against spurious revocations nd which would also protect the employee against urried action thus aiding in the making of a proper evocation. It is no more of a burden for a member) ask his union, here the Brotherhood of Railroad 'rainmen, to provide him with a correct form than would be for him to make a request to some other nion. Here, the evidence shows that immediately pon receipt of a letter stating that appellant had esigned from membership a form for revocation of is dues deduction authorization was mailed without omment to appellant. He was no more restricted, oerced, or otherwise detered from properly revoking is authorization for dues deductions than he was

when he voluntarily followed the agreement and obtained the correct form from the Brotherhood of Railroad Trainmen at the time he made his original authorization. It would be perfectly logical for him to follow the same procedure he followed in authorizing dues deductions when he desired to revoke the authorization. Certainly, there is nothing unreasonable in requiring that he request the proper form from the Brotherhood of Railroad Trainmen either by phone, or in writing, where there is no evidence that the Brotherhood of Railroad Trainmen in any way hesitated in supplying the proper form for revocation when requested. Had there been the slightest interference with the right of appellant to obtain a proper form to revoke his authorization, then there might have been some ground for claiming his right or privilege to change unions had been obstructed. It is difficult to see how requiring the appellant to follow the procedure set out in the Dues Deduction Agreement to request a correct form from the Brotherhood of Railroad Trainmen can constitute an unreasonable burden or any burden at all upon appellant's right to change unions since he obviously cannot change his union affiliations without informing the Brotherhood of Railroad Trainmen of his withdrawal and, in the withdrawal, he certainly can request a form for revocation of his dues deduction authorization.

Appellant's failure to have his revocation accepted by the Southern Pacific Company was due entirely

o his wilful refusal to send the correct form to the Brotherhood of Railroad Trainmen. Appellant has rgued at length that if required to obtain the proper orm from the Brotherhood of Railroad Trainmen hat he would be subjected to pressures not to revoke is wage assignment and, above all, not to change his ffiliation. There is absolutely nothing, either in the ecord or in the Dues Deduction Agreement, to substantiate these charges. The Brotherhood of Railroad Trainmen had the proper forms available for use by he appellant and, as the evidence shows, the correct orm was furnished and supplied to the appellant mmediately upon receipt of his notification of withrawal. The appellant did not see fit to return this orrect form to the Brotherhood of Railroad Trainmen which was just as simple as sending his withrawal to the Brotherhood of Railroad Trainmen hich was accepted without comment. The correct orm was mailed to appellant with no personal conact either having been made, requested, or required R. 25). The facts refute appellant's argument that he Brotherhood of Railroad Trainmen would refuse o furnish the correct forms except under circumtances whereby the appellant would be subjected to ressures not to change his union affiliation. The only eason appellant failed to accomplish his objective of evoking his wage assignment was his wilful refusal o perform the simple act of filling out and returning he correct form which was actually furnished to him y the Brotherhood of Railroad Trainmen without ven a formal request.

(c) Appellant Should Not Be Allowed to Repudiate the Dues Deduction Agreement the Provisions of Which He Has Availed Himself of and Which Was Made on His Behalf by His Collective Bargaining Representative, the Brotherhood of Railroad Trainmen.

Appellant, in this case, having been a member of the Brotherhood of Railroad Trainmen, was actually a party to the Dues Deduction Agreement which Agreement he accepted and followed when it was convenient for him to do so. The Brotherhood of Railroad Trainmen was the chosen representative of the appellant. When agreements are entered into by the collective bargaining representative, they are binding upon the members of that bargaining organization.

> "Other parts of the Act expressly provided for the complete independence of employees in the matter of self-organization, and the right of employees to organize and bargain collectively through representatives of their own choosing, and conferred upon the majority of any class of employees the right to determine who should be the representatives thereof. Section 2 (Fourth) of the Act of May 20, 1926, as amended by the Act of June 21, 1934, 45 U.S.C.A. Secs. 151a and 152, Fourth. There can be no doubt that the action of a majority of employees in the selection of representatives *and the action of the representatives themselves so selected were intended to be binding upon the whole class of employees.*"
>
> *Atlantic Coast Line R. Co. v. Pope,* 119 F. 2d 39 at 43.

Appellant was fully aware of the terms of the agreement entered into by and between the Brother-

ood of Railroad Trainmen and the Southern Pacific ompany because he obtained the correct form to ake his original wage deduction authorization. As matter of fact, appellant has never contended that e did not know that the agreement provided that the vocation forms were to be "reproduced and fur- shed" by the Brotherhood of Railroad Trainmen. ppellant knew the terms of the agreement. He knew e had to obtain the form from the Brotherhood of ailroad Trainmen. The Brotherhood of Railroad rainmen voluntarily furnished him with the correct rm though under no obligation to do so and the ly reason appellant failed to have the Southern acific Company stop deductions from his wages in cordance with his original authorization was his parent deliberate wilful failure to follow the pro- dures of the contract which he ratified and with hich he was familiar and pursuant to the terms of hich he had originally authorized the deductions.

CONCLUSION.

In summing up, appellees Brotherhood of Railroad rainmen, a voluntary association; J. J. Corcoran, as eneral Chairman, General Committee, Brotherhood Railroad Trainmen; J. E. Teague, as Secretary, eneral Committee, Brotherhood of Railroad Train- en, contend that there being no procedural set-up the Railway Labor Act for administering dues ductions that a Dues Deduction Agreement may ovide a reasonable and orderly procedure to govern

its operation so long as the privilege of appellant to change unions is free of unreasonable burdens. Both the Dues Deduction Agreement and the facts of this case show that the method of revocation as set out in the Dues Deduction Agreement is reasonable and serves the purpose of avoiding disputes in accordance with the express purpose of the Railway Labor Act and does not constitute an unreasonable burden upon appellant's privilege of changing unions. There certainly can be nothing unreasonable about requiring the member of a union to conduct his business through the union in an orderly manner. Therefore, it is respectfully submitted that the decision of the trial Court is correct and should be affirmed.

Dated, Oakland, California,
March 24, 1958.

Respectfully submitted,
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